

2012 Investment Climate Statement: Kosovo

Openness to, and Restrictions on, Foreign Investment

Kosovo is generally a business-friendly country, and the Government of Kosovo (GoK) and the Ministry of Trade and Industry (MTI) actively promote foreign investment. Kosovo is a secular country; its people are generally western-looking and desire to be part of Euro-Atlantic institutions, such as NATO and the European Union. Current legislation and regulations are purposely written with EU standards in mind. Perceptions of official and informal corruption, the growing state bureaucracy, and the lack of universal recognition of Kosovo's 2008 independence have at times proved to be obstacles to attracting higher levels of foreign investment. These obstacles exist notwithstanding the Kosovo Government's pro-business posture, the country's location, natural resources, and low wages, and the entrepreneurial nature of its citizens. Kosovo has attracted large-scale foreign investment in certain fields, namely construction, infrastructure and the privatization of state assets, especially mining, telecom, and Socially-Owned Enterprises (SOEs). Among the most visible foreign investment projects in Kosovo is Route 7 (the Ibrahim Rugova National Highway) currently being constructed by American-Turkish consortium, Bechtel-Enka. A Turkish-French consortium (Limak-Aéroport de Lyon) runs the Pristina International Airport concession, and international firms and franchises, including Ford, Toyota, Hellenic Bottling Company (HBC) Coca-Cola, RC Cola, FedEx, UPS, DHL, Deloitte, Booz Allen Hamilton, and Microsoft have had an established presence in Kosovo for years. A flat 10% corporate tax and temporary exemptions on paying VAT tax for new exporters help to attract foreign investors and businesses.

The American Chamber of Commerce (AmCham) and the Kosovo Chamber of Commerce (KCC) are active and directly involved in strengthening the private sector business climate in Kosovo. As a rule, they have the government's ear on business matters. Since 2001, the United Nations Interim Administrative Mission in Kosovo (UNMIK), which governed Kosovo under UNSC Resolution 1244, and later the Kosovo Assembly have both passed pro-business legislation that specifically seeks to attract foreign investment. Under domestic legislation, foreign firms operating in Kosovo are granted the same privileges as local businesses, with the exception that foreign investors may not hold more than 49% ownership in a business producing or selling military-related products (Reg. No. 2001/3, Section 6). The legal system in Kosovo, however, can be complicated, with three legal frameworks operating simultaneously: The Applicable Law, including laws of the Former Yugoslavia, enacted until 1989, UNMIK Regulations, and laws passed by the Kosovo Assembly. Although local courts recognize foreign arbitral awards, enforcement is often weak and disputes can take a lengthy time to resolve. While the basic legislation of a market-oriented economy is in place, determining property ownership remains a significant challenge. These legal uncertainties, in addition to poor implementation of laws and contract enforcement, and an underdeveloped judiciary, hinder foreign investment and economic growth. The U.S. and EU have assistance programs in place to help improve judicial capacities.

All major sectors of the Kosovo economy are open to foreign investment. Within the Central Bank of Kosovo, the Anti-Money Laundering Unit screens FDI, and there are no known cases of discriminatory conduct against foreign investors. The Financial Intelligence Unit inside the

Ministry of Finance screens all financial transactions greater than €5,000 for suspicious activity. In 2011, the GoK took substantive steps to further open Kosovo to foreign investment through the passage of the Public Private Partnership (PPP) Law, no. 04 L-045 of 2011. The new PPP Law has been harmonized with the European Council regulations and *Acquis Communautaire*. The law creates separate definitions for Concession and PPP, meaning that deals can be structured more flexibly. A provision for unsolicited proposals has been removed, ensuring a competitive bidding process, as have limits on the length of projects. The GoK has also begun privatizing the energy sector for generation and distribution; monetizing mining resources; restarting the privatization process of the publicly-owned telecommunication provider, Post & Telecom of Kosovo (PTK); and will soon be seeking investment in a new winter tourism resort in Brezovica near the border with Macedonia. The government is also planning to have a North-South highway (Route 6) constructed to facilitate trade between the capital, Macedonia, and points farther south, such as Greece. The GoK will conduct feasibility studies in 2012 and is planning to open the actual construction tender in 2013 or 2014 – which is expected to attract major international interest. The planned routes and the already constructed Route 7 highway segments will serve as a major catalyst for region-wide trade and facilitate tourism and travel throughout the Balkans.

Kosovo has an active and efficient business registration process. The Ministry of Trade and Industry reports continued registration of new businesses at significant levels, indicating strong local enterprise development. Business license applications are processed by the Agency for Business Registration in Pristina and are normally issued within three business days, although the entire process of registering a business can take upwards of two weeks. Kosovo's commercial laws are available to the public in English on the Kosovo Assembly's Website at www.assembly-kosova.org/?cid=2,191 and on the GoK's Official Gazette website at: <http://www.gazetazyrtare.com/e-gov/index.php?lang=en>.

Businesses are required to obtain two mandatory financial records: a fiscal number and a Value-Added Tax (VAT) number from the Tax Administration. Additional filings may be necessary for individual businesses. In addition to the national-level requirements, businesses are required to obtain a business license from the municipality in which they will operate. This municipal license is mainly aimed at raising local revenue. Each municipality publishes a list of annual fees by business type. Fees may be higher for larger or more visible firms and are subject to change.

Kosovo has recently undertaken several reforms to improve its business environment, including elimination of charter capital requirements for Limited Liability Companies (LLCs); elimination of the business registration fee; and elimination of the work permit. There are also ongoing discussions to remove other unnecessary requirements, such as import licenses, municipal permits, and other non-transparent regulations to improve the overall business environment.

Determining property ownership remains a serious challenge. Formal property transfers require a review by a court; however, property transfers often occur via informal arrangements between buyers and sellers who frequently do not immediately record them. While the informal practice is declining, it is still widespread. Finished commercial and habitable residential buildings are

subject to property tax, while land is not at present. Construction activities are subject to high fees and may be subject to arbitrary charges.

These legal uncertainties, in addition to weak law implementation, poor contract enforcement, and underdeveloped judicial capacity to efficiently and effectively resolve complex litigation hinder economic growth and investment. Often laws passed by Parliament pertaining to commerce are hobbled by a lack of enforceability and inertia to cling to the status quo. All commercial laws are available to the public in English on the GoK's Official Gazette website at: <http://www.gazetazyrtare.com/e-gov/index.php?lang=en>. These documents are "as adopted" and a full understanding of a specific legal issue may require research into various legal acts and amendments. However, work is underway to consolidate both laws and regulations into a single user-friendly and compulsory database to increase transparency and certainty.

Kosovo's rankings in select surveys are noted below where data are available:

Transparency International Corruption Index	2011	112
Heritage Economic Freedom	2012 Does not list Kosovo	
World Bank Doing Business	2011	117
MCC Government Effectiveness	2011	39%
MCC Rule of Law	2011	35%
MCC Control of Corruption	2011	35%
MCC Fiscal Policy	2011	85%
MCC Trade Policy	2011	n/a
MCC Regulatory Quality	2011	84%
MCC Business Start Up	2011	28%
MCC Land Rights Access	2011	n/a
MCC Natural Resource Mgmt.	2011	n/a

NOTE: For MCC data, figures run from 0% (the lowest) to 100% (the highest). See more at <http://www.mcc.gov/documents/scorecards/score-fy11-kosovo.pdf>. Kosovo's lack of UN membership limits the UN data available for the MCC report card. The Heritage Foundation did not cover Kosovo in its Global Economic Freedom Report.

Conversion and Transfer Policies

The Foreign Investment Law, no. 2005/02-L33, guarantees unrestricted use of income from foreign investment after taxes and other liabilities are paid. This includes transfers to other foreign markets or foreign currency conversions. All currency conversions and transfers are processed in accordance with EU banking procedures. Conversions are made at the market rate of exchange. Foreign investors are permitted to open bank accounts in any major trading currency.

Expropriation and Compensation

Article 8 of the Foreign Investment Law protects foreign investments from unreasonable expropriation, and guarantees due process and timely compensation payment for valid claims with fair market prices. In April 2005, UNMIK approved an eminent domain clause in order to prevent lawsuits deriving from property expropriations and sales occurring as part of the privatization process; this clause only applies to cases of privatized Socially Owned Enterprises.

Dispute Settlement

Chapter 4 of the Foreign Investment Law assigns jurisdiction for business dispute resolution to Kosovo courts. Foreign investors are free, however, to agree upon arbitration or another, alternative dispute resolution mechanism. The American and Kosovo chambers of commerce recently inaugurated alternative dispute resolution centers and some businesses are stipulating the use of these centers in their contracts. The results of arbitration are enforceable by local courts as Kosovo has voluntarily accepted the International Center for Settlement of Investment Disputes (ICSID) Convention and enshrined it in local law. The Foreign Investment Law stipulates that investors select from the following standards for investment dispute arbitration:

- a) The International Center for Settlement of Investment Disputes (ICSID) Convention, if both the foreign investor's country of citizenship and Kosovo are parties to the convention at the time of the request for arbitration;
- b) The ICSID Additional Facility Rules, if the jurisdictional requirements for personal immunities per Article 25 of the ICSID Convention are not fulfilled at the time of the request for arbitration;
- c) The United Nations Commission on International Trade Law Rules. In this case, the appointing authority referred to therein will be the Secretary General of ICSID; or,
- d) The International Chamber of Commerce Rules.

Kosovo's legal regime is based on three legal systems, including a mix of old Yugoslavia laws, UNMIK Regulations, and laws adopted by the Kosovo Assembly since 2008. The court's effectiveness has been undermined by extremely long delays in adjudicating commercial court cases and poor enforcement of existing laws and contracts. These impediments frequently affect utility bill and loan collections.

Albanian and Serbian are Kosovo's official languages, though laws are usually also published in English. Care should be taken, however, as the quality of the translations, even within the laws themselves, is not consistent.

Kosovo's commercial court has jurisdiction over disputes involving shipping, intellectual property rights, and unfair trade practices. Municipal courts handle bankruptcy procedures for all companies, except for SOEs, according to Kosovo's Bankruptcy law. The Pristina Municipal court has a special bankruptcy division. However, the lack of secondary legislation pertaining to

bankruptcy hinders the work of the Kosovo Commercial Court in discharging bankruptcy cases. Kosovo's judicial system, although improving, still suffers from many weaknesses. Although local courts recognize foreign arbitral awards, enforcement is weak and takes a long time to complete. There were no investments disputes in Kosovo involving foreign investors.

In 2011, the Kosovo Assembly passed three important laws pertaining to privatization: the Law on the Privatization Agency of Kosovo 04/L-034, the Law on the Reorganization of Certain Enterprises and their Assets 04/L-035 (the "Trepca Law"), and the Law on the Special Chamber of the Supreme Court of Kosovo. The Special Chamber is composed of eight international and twelve local judges who handle disputes and claims related to privatization and economic restructuring. The Special Chamber has primary jurisdiction over appeals against the decisions of the Privatization Agency of Kosovo (PAK), as well as creditor, ownership, and property claims brought against SOEs and POEs, and claims arising from the privatization and liquidation of SOEs. The procedures for claimants wishing to institute proceedings are detailed in PAK Law no. 04/L-034.

For criminal cases, the 2004 UNMIK-based Criminal Code and the Code of Criminal Procedure apply; both codes are expected to be substantially re-written and passed by Parliament by January 2013 to be more in line with the EU Convention on Human Rights, to modernize definitions and best practices, and to reduce waste of judicial resources. In 2013, a new Law on Courts and the Law on State Prosecutors will go into effect, significantly changing the current structure of courts and prosecutors offices. The current court structure includes the Supreme Court of Kosovo, District Courts, Municipal Courts, Commercial Court and Courts of Minor Offenses, including a High Court of Minor Offenses. The new court structure will include Basic Courts, a Court of Appeals and the Supreme Court. The Basic Courts and Court of Appeals will each have a Department for Commercial Matters, Department for Administrative Cases, a Department for Serious Crimes, a General Department and a Department for Minors. The Kosovo Judicial Council and the Kosovo Prosecutorial Council are making necessary arrangements to facilitate the reform process of the judiciary and of prosecutions. The passage of a new Criminal Procedure Code in particular should simplify and ease the burden on judicial resources, which should allow the Courts to address their significant backlog.

Performance Requirements and Incentives

The GoK does not specify performance requirements as a condition for establishing, maintaining or expanding investments in Kosovo. A 16% across-the-board value added tax (VAT) came into force in January 2009. Article 27 of the Law on Value Added Tax, no. 2009/03-L-146, provides for VAT-exempt goods, some of which include medicines, medical services, pharmaceutical products, agricultural inputs and public education services. In order to encourage investment, the GoK grants businesses certain VAT-related privileges: For companies importing capital goods, the GoK grants a six-month VAT payment deferment upon presentation of a bank guarantee. Suppliers may export goods and services without being required to collect VAT from foreign buyers. Suppliers may claim credit for taxes on inputs, either by offsetting those taxes against gross VAT liabilities, or by claiming a refund. A 10% flat corporate tax is in force making Kosovo one of the most competitive environments to do business in the region.

In September 2000, the EU formally recognized Kosovo as an autonomous customs territory and amended its General System of Preferences, eliminating quantitative restrictions for most industrial products from Kosovo. By June 2002, the EU granted preferential treatment to all imports from Kosovo, removing all remaining tariff ceilings for industrial products, including steel and textiles, and improving access to EU markets for agricultural products. Kosovo Customs continues to work to harmonize certificates of origin standards with EU Customs. In December 2008, the United States designated Kosovo a beneficiary developing country under the Generalized System of Preferences (GSP) program. While there are few companies that currently take advantage of this designation, the GSP program provides an incentive for investors to produce in Kosovo and export selected products duty-free to the U.S. market.

Kosovo Customs has issued an internal Administrative Instruction (AI) that reduces the number of documents needed to export and import. The AI provides that only two documents are now required to export goods -- a commercial invoice and a customs export declaration; and that only three documents are required to import -- a commercial invoice, a customs import declaration, and a certificate of origin. All neighboring countries, including Serbia, facilitate the trade and transfer of Kosovo goods to domestic and onward markets, although difficulties may occasionally occur.

Right to Private Ownership and Establishment

GoK regulations and the Foreign Investment Law do not interfere with the establishment, acquisition or sale of interests in enterprises by private entities. Ownership rights can be extended to foreign investors. Foreign investment is not subject to approval by the Government of Kosovo, except when such approval would be required for similar domestic businesses. The following rights also apply:

- a) Foreign investors may transfer property rights, including permits, to other legally qualified persons in the same manner and to the same extent as domestic investors;
- b) Foreign investors have the right to purchase residential and non-residential property to the same extent as domestic businesses;
- c) Foreign investors with less than a majority stake in an investment are protected as domestic minority shareholders in accordance with applicable law;
- d) Foreign investments are subject to the same tax obligations as domestic businesses; and
- e) Foreign investors may establish subsidiary enterprises, branches, and representative offices in the same manner and to the same extent as domestic businesses.

Protection of Property Rights

The Law on Cadastre No. 2003/25 establishes an immovable property rights register to protect private land ownership. The Kosovo Cadastral Agency (KCA) has authority for the overall administration of the official register, with municipal cadastral offices recording immovable

property rights in the official register under the authority of the KCA. Liens against movable property are protected under the law, which details the specific procedures by which liens can be created, enforced, and applied against third parties. This regulation applies to all transactions, regardless of form, intended to create a lien. The law also establishes a uniform system for securing and registering liens against immovable property, and to create a mortgage and lien registry.

However, the resolution of residential, agricultural and commercial property rights remains a serious and contentious issue in Kosovo. Most property records were destroyed or removed to Serbia by the Serbian government during the 1998-1999 conflict, making determination of rightful ownership for the majority of properties complex. There have been cases of up to 20 ownership claims on a single property, presenting a variety of ownership documents as proof. Despite the property registers remaining in Serbia, property sales and transfers -- some involving false documents -- are on-going, further complicating the resolution process. The backlog of property cases in Kosovo's court system is significant. With respect to the 1998-1999 armed conflict, the Kosovo Property Agency (KPA), formerly the Housing and Property Directorate (HPD), has authority to receive, register, and resolve property claims with respect to private immovable property, including agricultural and commercial property. Decisions taken by the KPCC are subject to a right of appeal only to the Supreme Court. KPA received 41,099 total claims of which 36,488 are for agricultural property. The KPA is also mandated to deal with a limited number of activities which formerly belonged to the HPD established under UNMIK Regulation 2000/23, whose closure coincided with the establishment of the KPA. Namely, the KPA is now mandated to implement Housing and Property Claims Commission (HPCC) decisions which were pending enforcement.

The Kosovo Assembly passed three significant laws in 2011 regarding intellectual property rights (IPR): the Law on Patents, 04 L-029, the Law on Trademarks 04 L-026, and the Law on Industrial Design 04 L-028, which, together with UNMIK Regulation 2006/46 on Copyright and Related Rights, ensures stronger protection of intellectual property rights; authorizes enforcement of trademark, copyright and patent laws; and any related international conventions. The Ministry of Trade and Industry established the Industrial Property Rights Office (IPO) in 2007 tasked with IPR protection. The 1981 Yugoslav Law on Protection of Inventions, Technical Improvements and Distinctive Signs, and the 1991 Law on Authors Rights are also considered applicable law in Kosovo's courts. Newly enacted legislation adheres to international conventions, such as: The Paris Convention, the Madrid Protocol, TRIPS Agreement, the Budapest Treaty and several of the European Council Directives on protection of IPR. In order to increase the effectiveness in implementing IPR rights, the GoK has established the National Intellectual Property Council following the IPO's initiative. The Council aims to increase inter-agency coordination in implementing IPR and comprises IPO, the Copyright Office, Kosovo Customs, Kosovo Police's Department for Economic Crimes and Corruption, the Market Inspectorate, the Judicial and Prosecutorial Council, the Medicines Agency, the Food and Veterinary Agency, and the Environmental Protection Agency.

Protection of intellectual property rights is poor. A number of counterfeit consumer goods (notably CDs, DVDs, clothing items and computer software) are available for sale and are openly traded.

Transparency of Regulatory System

In order to promote fair and open competition for government tenders, as well as transparency in the procurement and regulatory process, the GoK publishes the rules, regulations and procedures of the tendering process at: <http://krpp.rks-gov.net/Default.aspx?LID=2>. As Kosovo continues to establish regulatory institutions, procedures for obtaining licenses and permits can vary widely, with a corresponding variance in process transparency.

The 2011 Law on Public Procurement, no. 04/L-042, devolves the power of procurement to the budgetary units (i.e. ministries, municipalities and independent agencies) except in cases where the GoK authorizes the Central Procurement Agency within the Ministry of Finance to procure goods and/or services on behalf of the government. All tenders are advertised in Albanian and Serbian, as well as in English in cases of large tenders. The Public Procurement Regulatory Commission recently initiated procurement audits of the various Kosovo ministries, municipal authorities and agencies receiving funds from the Kosovo Consolidated Budget.

All legal, regulatory, and accounting systems in Kosovo were created to adhere to European Union standards and follow best international practices. Laws passed in the Assembly are generally business friendly.

Efficient Capital Markets and Portfolio Investment

The Central Bank of Kosovo (CBK) is an independent body responsible for fostering the development of competitive, sound, and transparent banking and financial sectors. This includes supervising and regulating Kosovo's banking sector, insurance industry, pension funds, micro-finance institutions, and performing other normal central bank tasks, including: cash management, transfers, clearing, management of funds deposited by the Ministry of Finance and other public institutions, collection of financial data, and management of a credit register. The CBK is not authorized to grant loans to banks but successfully issued the first government securities in the form of 90-day Treasury bills at 3.5% on January 17. Only commercial banks were able to participate in the auction, as they met the criteria of primary bond traders based on the Regulation on Treasury Bonds. However, a secondary market allows for banks and other clients to trade these securities. The GoK plans to hold subsequent monthly auctions of €10 million in 90-day T-bills, with 6-month securities planned for later in the year as the market stabilizes. The GoK will also host one of the ratings agencies in late January to evaluate Kosovo for its first ever international credit rating.

As of June 2011, Kosovo's banking sector experienced an annual growth rate in lending of 15.7% as compared to 9.7% during the prior year. Approximately 70% of all lending activity is to enterprises. Despite these positive trends, relatively little lending is directed to long-term investment activities. High interest rates (averaging approximately 14%) and high collateral requirements are a disincentive to the private sector, while banks are hesitant to change their practices due to unclear property rights and the lack of confidence in the rule of law. This cautiousness is evident in the banking sector's excess reserves, which are above the minimum level required by the Central Bank of Kosovo; these reserves earn no interest for the banks.

Most deposits are demand deposits and total assets of the three largest banks, all of which are international banks, amount to 74.5% of the entire banking sector in Kosovo.

The insurance sector is small but has grown steadily in recent years, with representation from several European firms. At the end of 2011, there were nine commercial banks and fourteen licensed insurance companies in Kosovo.

The official currency of Kosovo is the Euro. Given that the Central Bank of Kosovo does not have independent monetary policy, prices react heavily to market trends in the larger Eurozone.

Political Violence

In July 2011, a trade dispute with neighboring Serbia, one of Kosovo's largest trading partners, led to a total blockade of cross-border trade between the countries for approximately two months. However, free-trade generally resumed between the two countries in September 2011 when Serbia agreed to accept Kosovo's customs stamp. Isolated incidents of inter-ethnic and politically-motivated violence as well as sporadic political protests have occurred since then, but none of these events adversely affected Kosovo's political stability or overall economic situation. The Kosovo Police, Kosovo Security Force, and the European Union's Rule-of-Law Mission in Kosovo (EULEX) have responded to and investigated these events, according to their legal mandate. Kosovo's judiciary is augmented by EULEX, which has a Monitoring, Mentoring, and Advising role (MMA) in rule of law matters.

Corruption

The 2011 World Bank's "Doing Business" report ranks Kosovo 117th out of 183 economies. Transparency International's 2011 "Corruption Perceptions Index" shows public opinion of corruption in Kosovo to be "widespread"; TI's perceived level of public sector corruption ranked Kosovo 112 out of 183 countries and territories surveyed.

It is important for U.S. companies, irrespective of their size, to assess the business climate in the relevant market in which they will be operating or investing, and to have an effective compliance program and measures to detect and prevent corruption, including foreign bribery. U.S. individuals and firms operating or investing in foreign markets should become familiar with the relevant anti-corruption laws of both the foreign country and the United States in order to properly comply with them, and where appropriate, they should seek the advice of legal counsel.

The U.S. Government seeks to level the global playing field for U.S. businesses by encouraging other countries to take steps to criminalize their own companies' acts of corruption, including bribery of foreign public officials, and requiring them to uphold their obligations under relevant international conventions. A U.S. firm that believes a competitor is seeking to use bribery of a foreign public official to secure a contract should bring this to the attention of appropriate U.S. agencies, as noted below:

U.S. Foreign Corrupt Practices Act: In 1977, the United States enacted the Foreign Corrupt Practices Act (FCPA), which makes it unlawful for a U.S. person, and certain foreign issuers of securities, to make a corrupt payment to foreign public officials for the purpose of obtaining or retaining business for or with, or directing business to, any person. The FCPA also applies to foreign firms and persons who take any act in furtherance of such a corrupt payment while in the United States. For more detailed information on the FCPA, see the FCPA Lay-Person's Guide at: <http://www.justice.gov/criminal/fraud/fcpa/docs/lay-persons-guide.pdf>

Other Instruments: It is U.S. Government policy to promote good governance, including host country implementation and enforcement of anti-corruption laws and policies pursuant to their obligations under international agreements. Since enactment of the FCPA, the United States has been instrumental in the expansion of the international framework to fight corruption. Several significant components of this framework are the Organization of Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-bribery Convention), the United Nations Convention against Corruption (UN Convention), the Inter-American Convention against Corruption (OAS Convention), the Council of Europe Criminal and Civil Law Conventions, and a growing list of U.S. free trade agreements. Kosovo is party to the OECD Anti-bribery Convention and the Council of Europe Convention at this time.

OECD Anti-bribery Convention: The OECD Anti-bribery Convention entered into force in February 1999. As of December 2009, there are 38 parties to the Convention including the United States (see <http://www.oecd.org/dataoecd/59/13/40272933.pdf>). Major exporters China, India, and Russia are not yet parties, although the U.S. Government strongly endorses their eventual accession to the Convention. The Convention obligates the Parties to criminalize bribery of foreign public officials in the conduct of international business. The United States meets its international obligations under the OECD Anti-bribery Convention through the U.S. FCPA.

UN Convention: The UN Anticorruption Convention entered into force on December 14, 2005, and there are 143 parties to it as of December 2009. The UN Convention is the first global comprehensive international anticorruption agreement and requires countries to establish criminal and other offences to cover a wide range of acts of corruption. The UN Convention goes beyond previous anticorruption instruments, covering a broad range of issues ranging from basic forms of corruption such as bribery and solicitation, embezzlement, trading in influence to the concealment and laundering of the proceeds of corruption. The Convention contains transnational business bribery provisions that are functionally similar to those in the OECD Anti-bribery Convention and contains provisions on private sector auditing and books and records requirements. Other provisions address matters such as prevention, international cooperation, and asset recovery. (See <http://www.unodc.org/unodc/en/treaties/CAC/signatories.html>.) Kosovo is not currently a party to the UN Convention, but is a party via UNMIK Regulation 2001/3 to the OECD Convention (see above).

OAS Convention: In 1996, the Member States of the Organization of American States (OAS) adopted the first international anticorruption legal instrument, the Inter-American Convention against Corruption (OAS Convention), which entered into force in March 1997. The OAS

Convention, among other things, establishes a set of preventive measures against corruption, provides for the criminalization of certain acts of corruption, including transnational bribery and illicit enrichment, and contains a series of provisions to strengthen the cooperation between its States Parties in areas such as mutual legal assistance and technical cooperation. As of December 2009, the OAS Convention has 33 parties; however, Kosovo is not currently a signatory to the OAS Convention. (See <http://www.oas.org/juridico/english/Sigs/b-58.html>.)

Council of Europe Criminal Law and Civil Law Conventions: Many European countries are parties to either the Council of Europe (CoE) Criminal Law Convention on Corruption, the Civil Law Convention, or both. The Criminal Law Convention requires criminalization of a wide range of national and transnational conduct, including bribery, money-laundering, and account offenses. It also incorporates provisions on liability of legal persons and witness protection. The Civil Law Convention includes provisions on compensation for damage relating to corrupt acts, whistleblower protection, and validity of contracts, inter alia. The Group of States against Corruption (GRECO) was established in 1999 by the CoE to monitor compliance with these and related anti-corruption standards. Currently, GRECO comprises 46 member States (45 European countries and the United States). As of December 2009, the Criminal Law Convention has 42 parties and the Civil Law Convention has 34 (see www.coe.int/greco).

Free Trade Agreements: While it is U.S. Government policy to include anticorruption provisions in free trade agreements (FTAs) that it negotiates with its trading partners, the anticorruption provisions have evolved over time. The most recent FTAs negotiated now require trading partners to criminalize “active bribery” of public officials (offering bribes to any public official must be made a criminal offense, both domestically and trans-nationally) as well as domestic “passive bribery” (solicitation of a bribe by a domestic official). All U.S. FTAs may be found at the U.S. Trade Representative Website: <http://www.ustr.gov/trade-agreements/free-trade-agreements>. Kosovo does not have an FTA with the United States.

Local Laws: U.S. firms should familiarize themselves with local anticorruption laws, and, where appropriate, seek legal counsel. While the U.S. Department of Commerce cannot provide legal advice on local laws, the Department’s U.S. and Foreign Commercial Service can provide assistance with navigating the host country’s legal system and obtaining a list of local legal counsel.

Assistance for U.S. Businesses: The U.S. Department of Commerce offers several services to aid U.S. businesses seeking to address business-related corruption issues. For example, the U.S. and Foreign Commercial Service can provide services that may assist U.S. companies in conducting their due diligence as part of the company’s overarching compliance program when choosing business partners or agents overseas. The U.S. Foreign and Commercial Service can be reached directly through its offices in every major U.S. and foreign city, or through its Website at www.trade.gov/cs.

The Departments of Commerce and State provide worldwide support for qualified U.S. companies bidding on foreign government contracts through the Commerce Department’s Advocacy Center and State’s Office of Commercial and Business Affairs. Problems, including alleged corruption by foreign governments or competitors, encountered by U.S. companies in

seeking such foreign business opportunities can be brought to the attention of appropriate U.S. government officials, including local embassy personnel and through the Department of Commerce Trade Compliance Center “Report A Trade Barrier” Website at tcc.export.gov/Report_a_Barrier/index.asp.

Guidance on the U.S. FCPA: The Department of Justice’s (DOJ) FCPA Opinion Procedure enables U.S. firms and individuals to request a statement of the Justice Department’s present enforcement intentions under the anti-bribery provisions of the FCPA regarding any proposed business conduct. The details of the opinion procedure are available on DOJ’s Fraud Section Website at www.justice.gov/criminal/fraud/fcpa. Although the Department of Commerce has no enforcement role with respect to the FCPA, it supplies general guidance to U.S. exporters who have questions about the FCPA and about international developments concerning the FCPA. For further information, see the Office of the Chief Counsel for International Counsel, U.S. Department of Commerce, Website, at http://www.ogc.doc.gov/trans_anti_bribery.html. More general information on the FCPA is available at the Websites listed below.

Exporters and investors should be aware that generally all countries prohibit the bribery of their public officials, and prohibit their officials from soliciting bribes under domestic laws. Most countries are required to criminalize such bribery and other acts of corruption by virtue of being parties to various international conventions discussed above.

Local Information: Public sector corruption in government procurement tenders and privatization including bribery of public officials, and officials seeking payoffs, remains an impediment for foreign firms operating in Kosovo. Corruption also remains widespread in private industry, adversely affecting commercial development. The Law on the Suppression of Corruption was passed in May 2005, creating an Anti-Corruption Agency (ACA) to address this problem. This agency is tasked with, among other duties, preparing an anti-corruption strategy for Assembly approval, conducting administrative investigations of alleged corruption cases, and monitoring proper implementation of the Corruption Law. Citizens can report suspected corruption via a toll-free hotline number 044 082 82 or through the Anti-Corruption Agency’s website at www.akk-ks.org. In 2011, Anti-Corruption Agency figures show an increase of reports received by ACA and of those that were forwarded for investigation and prosecution. Per the current Kosovo Criminal Code, a bribe by a local company or individual to a foreign official is a criminal act punishable by a sentence up to three years. The pending criminal code would raise that punishment to a maximum of eight years. There are several government institutions and agencies in Kosovo that combat corruption as are Investigation Units within Customs, Tax Administration, Kosovo Police, Prosecution, Financial Intelligence Unit, Public Review Body an agency adjudicating complaints on public tenders, and Office of Auditor General. Transparency International Kosovo has a presence in Kosovo through the Kosovo Democratic Institute, a local anti-corruption watchdog nongovernmental organization, and there are also several independent local NGOs that monitor and publish anti-corruption reports.

In 2008, the Kosovo government took additional legislative steps to combat corruption. Government officials are now required to disclose all gifts received, as stipulated by the Law on Suppression of Corruption. In June 2009, the Assembly passed the Law on Declaration, Origin and Control of Assets of Senior Public Officials requiring government officials to file asset

declarations upon entry and exit from government service. ACA reports say that over 95% of all senior officers declared their assets; non-reporting officials were subject to court proceedings, with fines resulting in some cases. In January 2010, the Kosovo Assembly adopted the new Law on Anti-Corruption that brought a new approach to combating corruption. Since 2003, the Financial Intelligence Unit (FIU) has conducted financial inspections of public bodies and enterprises, as well as other organizations funded by the Kosovo Budget. The FIU also has the authority to conduct criminal investigations.

There are frequent reports of irregularities in public tendering procedures. The recent revision of the Public Procurement Law and a significant increase in public audits from the Office of the Auditor General are important steps forward. The Public Procurement Law clearly defines the division between executive and regulatory functions, in accordance with EU practices. Tax evasion is high, and there are reports that certain local and foreign businesses are concerned about the professional ethics of some government officials, who have purportedly accepted bribes in exchange for licenses, permits, movement of paperwork or even routine public services. Traditional lending and business practices tend to favor personal connections and nepotism over creditworthiness.

Anti-Corruption Resources: Some useful resources for individuals and companies regarding combating corruption in global markets include the following:

- Information about the U.S. Foreign Corrupt Practices Act (FCPA), including a “Lay-Person’s Guide to the FCPA” is available at the U.S. Department of Justice’s Website at: <http://www.justice.gov/criminal/fraud/fcpa>.
- Information about the OECD Anti-bribery Convention including links to national implementing legislation and country monitoring reports is available at: http://www.oecd.org/departement/0,3355,en_2649_34859_1_1_1_1_1,00.html. See also new Anti-bribery Recommendation and Good Practice Guidance Annex for companies: <http://www.oecd.org/dataoecd/11/40/44176910.pdf>
- General information about anticorruption initiatives, such as the OECD Convention and the FCPA, including translations of the statute into several languages, is available at the Department of Commerce Office of the Chief Counsel for International Commerce Website: http://www.ogc.doc.gov/trans_anti_bribery.html.
- Transparency International (TI) publishes an annual Corruption Perceptions Index (CPI). The CPI measures the perceived level of public-sector corruption in 180 countries and territories around the world. The CPI is available at: http://www.transparency.org/policy_research/surveys_indices/cpi/2009. TI also publishes an annual *Global Corruption Report* which provides a systematic evaluation of the state of corruption around the world. It includes an in-depth analysis of a focal theme, a series of country reports that document major corruption related events and developments from all continents and an overview of the latest research findings on anti-corruption diagnostics and tools. See <http://www.transparency.org/publications/gcr>.

- The World Bank Institute publishes Worldwide Governance Indicators (WGI). These indicators assess six dimensions of governance in 212 countries, including Voice and Accountability, Political Stability and Absence of Violence, Government Effectiveness, Regulatory Quality, Rule of Law and Control of Corruption. See http://info.worldbank.org/governance/wgi/sc_country.asp. The World Bank Business Environment and Enterprise Performance Surveys may also be of interest and are available at: <http://go.worldbank.org/RQQXYJ6210>.
- The World Economic Forum publishes the *Global Enabling Trade Report*, which presents the rankings of the Enabling Trade Index, and includes an assessment of the transparency of border administration (focused on bribe payments and corruption) and a separate segment on corruption and the regulatory environment. See <http://www.weforum.org/en/initiatives/gcp/GlobalEnablingTradeReport/index.htm>.
- Additional country information related to corruption can be found in the U.S. State Department's annual *Human Rights Report* available at <http://www.state.gov/g/drl/rls/hrrpt/>.
- Global Integrity, a nonprofit organization, publishes its annual *Global Integrity Report*, which provides indicators for 92 countries with respect to governance and anti-corruption. The report highlights the strengths and weaknesses of national level anti-corruption systems. The report is available at: <http://report.globalintegrity.org/>.
- World Bank's "Ease of Doing Business Report" <http://www.doingbusiness.org/rankings>
- Heritage Foundation: Please note that the Heritage Foundation does not currently rank Kosovo, but other regional data and statistics can be found at: <http://www.heritage.org/Index/Ranking>
- For Millennium Challenge Corporation (MCC) Kosovo Rankings please go to: <http://www.mcc.gov/documents/scorecards/score-fy11-kosovo.pdf>

Bilateral Investment Agreements

Albania was the first country to sign an FTA with Kosovo in 2003, followed by Macedonia in 2005. The Kosovo-Macedonia FTA stipulates that Kosovo imports have complete duty-free access to the Macedonian market but in reality, Macedonia has at times imposed temporary duties at the border, particularly on Kosovo agricultural imports. In 2006 Kosovo signed FTAs with Croatia and Bosnia-Herzegovina, and became a signatory to the Central European Free Trade Area (CEFTA) and EU Common Aviation Area. CEFTA came into force in July 2007 and by September 2007 all signatories ratified the agreement, including Serbia. However, as with the FTA with Macedonia, CEFTA signatories have at times charged various temporary fees on Kosovo goods. Kosovo is also a member of the Athens Process on Energy for the Southeastern Europe Energy Community Treaty. This is a significant step for Kosovo toward achieving increased regional cooperation and securing alternate sources of energy.

OPIC and Other Investment Insurance Programs

The U.S. Overseas Private Investment Corporation (OPIC) has been involved in Kosovo since 2000, providing financing, political risk insurance and other investment vehicles to American investors. In June 2009, OPIC signed an investment agreement with Kosovo. With OPIC assistance, American investors are currently involved with projects in the energy and real estate development sectors. Kosovo is also member of World Bank, the Multilateral Investment Guarantee Agency and International Monetary Fund.

Labor

Kosovo Assembly passed in late 2010 the Law on Labor no. 03/L-212. The law requires employers to observe all applicable employee protections, including a 40-hour full-time work week, payment of overtime, adhering to occupational health and safety standards, respecting annual leave benefits and ensuring up to 12 months of maternity leave, which includes 6 months of paid leave at a reduced rate followed by six months of unpaid leave. The labor law calls for a minimum wage, which the Economic and Social Council of Kosovo decided would be €170 per month in 2011. The Ministry of Labor and Social Welfare has created a compliance office that has the authority to inspect employer adherence to labor law requirements. Labor disputes are adjudicated in local courts.

Kosovo requires businesses to pay a 5% social security contribution for their employees, one of the lowest rates in Europe.

Foreign-Trade Zones/Free Ports

The Kosovo Customs and Excise Code is business-friendly, compliant with EU and World Customs Organization standards, and addresses topics such as bonded warehouses, inward and outward processing, transit of goods, and free trade zones, with the aim of facilitating trade and stimulating export growth. In addition to imported goods, some Kosovo-produced goods from designated industries can also be stored in bonded warehouses, when applicable legislation dictates these goods meet export criteria. Foreign firms are permitted to import production inputs without paying taxes or customs duties for the manufacture of export goods.

The Customs Code permits the establishment of free zones for manufacturing and export purposes, but none have been established yet.

Foreign Direct Investment Statistics

Kosovo does not currently have a formalized system for collecting foreign direct investment data. The Investment Promotion Agency of Kosovo estimates over 2,800 foreign companies are currently operating in Kosovo. The top foreign investors by country for the previous year were: Turkey, the UK, the Netherlands, Austria, Germany and Slovenia. Top sector investments for foreign businesses include trading (51%), service industries (20%), manufacturing industries

(13%) and construction (12%). Central Bank figures show that in the first half of 2011 there were €157 million invested in Kosovo, which is €50 million more than in the same period of 2010.

Web Resources

U.S. Department of State: www.state.gov

U.S. Department of Commerce: www.commerce.gov

U.S. Trade and Development Agency: www.ustda.gov

U.S. Embassy Pristina: <http://pristina.usembassy.gov>

The World Bank: http://info.worldbank.org/governance/wgi/sc_country.asp.

International Monetary Fund: <http://www.imf.org/external/country/UVK/index.htm>

The Overseas Private Investment Corporation: www.opic.gov

Investment Promotion Agency of Kosovo: <http://www.invest-ks.org>

Economic Initiative for Kosovo: www.eciks.org/english

World Economic Forum (WEF) <http://www.weforum.org/>